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Supreme Court, U.S.
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No. 01-378

In The

Supreme Court of the United States

PASCUAL R. RODRIGUEZ,

Petitioner,

v.

IBP, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly concluded that the district court did not abuse its discretion by ordering Pascual Rodriguez to provide a release for his social security disability records.

2. Whether filing an appeal entitled Pascual Rodriguez to disobey the district court's order and prevented the district court from finding him in contempt.

3. Whether Pascual Rodriguez was entitled to stay the contempt sanction when he waited to request a stay until after the sanction was complete.

4. Whether the contempt sanction was properly crafted when it gave Pascual Rodriguez a final grace period to comply with the district court's order, when following the grace period it gradually reduced the verdict each business day that Pascual Rodriguez refused to comply, and when the verdict was grounded on the sanctioned misconduct.

LIST OF PARTIES

Pascual Rodriguez, *Petitioner*

IBP, Inc., *Respondent*

Sup. Ct. R. 29.6 Statement: IBP, Inc. is a subsidiary of Tyson Foods, Inc., which owns 100% of IBP, Inc.'s stock.

TABLE OF CONTENTS

	Page
Questions Presented	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	iv
Opinions Below	1
Jurisdiction	1
Statutes or Other Provisions Involved	1
Statement of the Case	2
Reasons for Denying the Writ	4
Conclusion	9

TABLE OF AUTHORITIES

Page

CASES:

Anderson v. Cryovac, Inc., 862 F.2d 910 (1st Cir. 1988) 3

Granfinanceria, S.A. v. Nordberg, 492 U.S. 33 (1989) 5

H.K. Porter Co. v. Goodyear Tire & Rubber Co., 536 F.2d 1115 (6th Cir. 1976) 7

In re Cordova Gonzalez, 726 F.2d 16 (1st Cir. 1984) 8

Klonoski v. Mahlab, 156 F.3d 255 (1st Cir. 1998) 7

Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978) 7

Schultz v. Butcher, 24 F.3d 626 (4th Cir. 1994) 7

Square Constr. Co. v. Washington Metro. Area Transit Auth., 657 F.2d 68 (4th Cir. 1981) 7

United States v. Alvarez-Sanchez, 511 U.S. 350 (1994) 5

United States v. United Foods, Inc., 121 S. Ct. 2334 (2001) 5

Washington v. Glucksberg, 521 U.S. 702 (1997) 6

Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co., 170 F.3d 985 (10th Cir. 1999) 3

FEDERAL RULES OF CIVIL PROCEDURE:

Fed. R. Civ. P. 60(b) 2, 3, 6, 7

SUPREME COURT RULES:

Sup. Ct. R. 10 4

OPINIONS BELOW

The opinion of the court of appeals denying Rodriguez's appeals (Petition, App. A) is reported at 243 F.3d 1221. The opinion of the court of appeals denying Rodriguez's motion to stay (Petition, App. I) is unreported. The opinion of the court of appeals denying Rodriguez's motion to clarify (Petition, App. J) is unreported. The opinion of the district court ordering Rodriguez to provide a release for his social security disability records (Petition, App. C) is unreported. The opinion of the district court denying Rodriguez's motion to alter or amend (Petition, App. E) is unreported. The opinion of the district court ordering Rodriguez to show cause why he should not be held in contempt (Petition, App. F) is unreported. The opinion of the district court finding Rodriguez in contempt and imposing a sanction (Petition, App. G) is unreported.

JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES OR OTHER PROVISIONS INVOLVED

Contrary to the statement in the Petition, this case does not involve any constitutional provisions. It does

involve Fed. R. Civ. P. 60(b), which provides in relevant part as follows:

> **Mistakes; Inadvertence; Excusable Neglect; newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or other misconduct of an adverse party; . . . or (6) any other reason justifying relief from the operation of the judgment. . . .

STATEMENT OF THE CASE

In 1994, Rodriguez filed a complaint in the United States District Court for the District of Kansas alleging that IBP discharged him in May 1992 in retaliation for exercising his rights under the Kansas Worker's Compensation Act. As stated by the district court, "the essential fact question in the present case [was] the physical condition of [Rodriguez] in 1992." Petition, App. G. Even Rodriguez does not dispute that his physical condition as admitted in and revealed by his social security disability records is at least highly relevant to that question, a question encompassing both liability and damages under governing Kansas law. Rodriguez never produced his social security records, despite the obligations imposed by several rules of civil procedure, a directive from the district court and, just prior to trial, his own promises to do so.

Through this misconduct, Rodriguez prevented the consideration of relevant evidence during summary judgment, appeal, remand and trial. For nearly all of that five-year period, Rodriguez not only withheld the records, he concealed their existence. After Rodriguez prevailed at trial, IBP asked the district court to order Rodriguez to provide a release for his social security records so that, if warranted, IBP could file a motion for relief from judgment under Fed. R. Civ. P. 60(b). Failure to disclose discovery materials qualifies as "misconduct" sufficient to justify relief under Fed. R. Civ. P. 60(b)(3). *Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d 985, 993 (10th Cir. 1999). The discovery misconduct "need not be result-altering to merit Rule 60(b)(3) redress." *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 924 (1st Cir. 1988). The "term ['misconduct'] can cover even accidental omissions." *Id.* at 923.

On July 2, 1999, the district court granted IBP's request, ordering Rodriguez to provide a release for his social security disability records.[1] This order coincided with the district court's final judgment on the merits and was entered before any party filed an appeal. Rodriguez refused to comply. Over the next three months, the parties communicated repeatedly with the district court about Rodriguez's disobedience. The district court remained firm in its order for Rodriguez to provide a

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[1] The July 2, 1999 order was entered on the docket on July 6, 1999. The Tenth Circuit uses July 6th when referring to the order. *E.g., Rodriguez v. IBP, Inc.*, 243 F.3d 1221, 1225 (10th Cir. 2001).

release. Petition, App. E. Still, Rodriguez refused to comply, calling the release of his social security disability records an "outcome determinative process." Petition, App. G (quoting Rodriguez's written response to the district court's order for him to show cause why he should not be held in contempt).

On October 13, 1999, the district court found Rodriguez in contempt. The district court crafted a sanction that began with a grace period. If that period expired without compliance, the sanction gradually reduced the verdict each day that Rodriguez's contemptuous behavior continued. Specifically, the district court ordered that if Rodriguez failed to provide a release by October 28, 1999, the judgment would be reduced by ten percent on that date and by an additional five percent of the original judgment on each subsequent business day. Petition, App. G. The Tenth Circuit affirmed, finding that the trial court did not abuse its discretion by ordering Rodriguez to provide a release for his social security disability records or by sanctioning Rodriguez for disobeying its order. *Rodriguez v. IBP, Inc.*, 243 F.3d 1221, 1230, 1231 (10th Cir. 2001).

REASONS FOR DENYING THE WRIT

Rodriguez never acknowledges or addresses the considerations governing review on certiorari stated in Sup. Ct. R. 10. Rodriguez simply restates his unsuccessful arguments to the Tenth Circuit as to why his misconduct should have no consequences. None of the arguments provides a "compelling reason" for granting certiorari.

A. Rodriguez's references to the Constitution do not justify certiorari.

In his effort to convert his Tenth Circuit briefing into a Petition, Rodriguez adds constitutional tag lines, asserting that the sanction was "constitutionally excessive," Petition at 29, and that the Tenth Circuit violated his "substantive due process" rights, *id.* at 25, 30. Because Rodriguez never made these arguments to either the district court or the Tenth Circuit, the Court should not consider them. *United States v. United Foods, Inc.*, 121 S. Ct. 2334, 2341 (2001); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 n.5 (1994); *Granfinanceria, S.A. v. Nordberg*, 492 U.S. 33, 38-40 (1989).

Even if Rodriguez had preserved these arguments, the mere existence of a constitutional issue is not by itself a "compelling reason" for certiorari. *See* Sup. Ct. R. 10 (indicating "the character of the reasons the Court considers" when reviewing petitions). Rodriguez has failed to demonstrate that these particular "constitutional" issues justify granting certiorari.

In fact, Rodriguez offers neither reasoning nor authority in support of his claims. He does not explain when a sanction becomes "constitutionally excessive" or cite any authority purporting to establish such a standard. Rodriguez also ignores that the contempt sanction gave him a final opportunity to comply before gradually reducing the verdict as Rodriguez's contemptuous conduct continued. Rodriguez was solely responsible for the size of the sanction.

Rodriguez's substantive due process allegation is equally deficient. Nowhere in the Petition does

Rodriguez identify the requisite fundamental right and liberty interest protected by the Fourteenth Amendment. *See Washington v. Glucksberg*, 521 U.S. 702, 720-22 (1997) (explaining that "a careful description of the asserted fundamental liberty interest" is a primary feature of substantive due process analysis). There is no fundamental right and liberty interest to hold onto a jury verdict. The rules of civil and appellate procedure illustrate this by providing various procedures for reversing or vacating verdicts. *E.g.*, Fed. R. Civ. P. 60(b).

B. The district court was authorized to order Rodriguez to provide a release for his social security disability records.

Rodriguez spends the bulk of the Petition, pages 4-25, arguing that the district court lacked the power to order him to provide a release for his social security disability records. The district court had the power. Rodriguez was required to produce his records during the initial discovery period, five years before trial, and he remained under a continuing duty. In the words of the Tenth Circuit: "It was Rodriguez . . . who violated the discovery rules by not making mandatory pre-trial disclosures under Rule 33(b)(1) of the Federal Rules of Civil Procedure." *Rodriguez*, 243 F.3d at 1229. Rodriguez also "fail[ed] to comply with his continuing duty to disclose under Rule 26(e)(2)." *Id.* at 1230. Despite these and other rules of procedure, the pre-trial directive of the district court, Petition, App. G, and Rodriguez's own promises, *id.*, Rodriguez never complied with his discovery obligations. The July 2, 1999 order, therefore, did not impose any new discovery obligation on Rodriguez. It required

Rodriguez to comply with a long existing discovery obligation. The district court entered its July 2, 1999 order before it lost jurisdiction over the case, jurisdiction that includes the authority to control discovery – even after trial. *Rodriguez*, 243 F.3d at 1230.

In addition, "the district court obviously found the records significant for the purpose of Rule 60(b) relief." *Rodriguez*, 243 F.3d at 1229. Rodriguez ignores Fed. R. Civ. P. 60(b), which provides a basis for *new* discovery. *See, e.g., Square Constr. Co. v. Washington Metro. Area Transit Auth.*, 657 F.2d 68, 73 (4th Cir. 1981); *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976). "[T]he policy of deterring discovery abuses which assault the fairness and integrity of litigation must be accorded precedence over the policy of putting an end to litigation." *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1346 (5th Cir. 1978); *Schultz v. Butcher*, 24 F.3d 626, 630-31 (4th Cir. 1994). "[P]arties ought not to benefit from their own mis-, mal-, or nonfeasance" during discovery. *Klonoski v. Mahlab*, 156 F.3d 255, 275 (1st Cir. 1998).

C. Rodriguez could not avoid both compliance and contempt by appealing.

Rodriguez insists that he was entitled to appeal or stay the district court's July 2, 1999 order without complying and without being held in contempt. Petition at 25-28. None of the cases he cites, however, supports this proposition, which would in effect eliminate any incentive to comply with district court orders and which would eviscerate the district court's contempt power. On the contrary, the cases cited by Rodriguez demonstrate

that the actions of the district court and the Tenth Circuit were consistent with the Rules of Civil Procedure, their underlying policy and the approach used by other circuits.

Rodriguez complains that he was required to provide a release and purge his contempt, which would moot his appeal of the contempt order, or be held in contempt and appeal. In this, he is right. *E.g., In re Cordova Gonzalez*, 726 F.2d 16, 20 (1st Cir. 1984) (cited by Rodriguez at page 26 of the Petition). Further, *In re Cordova Gonzalez* emphasizes that a district court is not required to stay contempt proceedings or sanctions during the pendency of an appeal. *Id.* at 19-21 (noting that a stay "would serve to destroy the effectiveness of the contempt proceeding").

Rodriguez's argument that he was entitled to a stay fails on the facts. As the Tenth Circuit recognized, the sanction had reduced the judgment to $0 before he requested a stay. *Rodriguez*, 243 F.3d at 1226. Rodriguez does not even attempt to justify his delay of six weeks between entry of the contempt order and the filing of his motion with the Tenth Circuit, a delay that occurred despite his contention that compliance would cause him irreparable harm.

Rodriguez nevertheless persists in his position that his defiance was somehow necessary to prevent him irreparable harm. Petition at 26-27. He fails to explain, however, what possible irreparable harm could result from providing a release of his social security disability records. The damaging or dispositive effect of clearly discoverable records on Rodriguez's claim is not the type of harm that would entitle Rodriguez to disobey the

district court's order. No consequence that might arise from disclosure of the records justifies Rodriguez's failure to comply.

CONCLUSION

For these reasons, the Petition should be denied.

Respectfully submitted,

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